IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

W.A.No.1269 of 2007

AGAINST THE JUDGEMENT IN O.P.NO.13092/2003 DATED 2.1.2007.

.....

APPELLANT: (PETITONER IN O.P.):-

DR.M.C.GEORGE,
MANAYATH HOUSE,AYAVANA P.O.,
MUVATTUPUZHA.
(NATIONAL TRUSTEE, INFAM, KANJIRAPPALLY,
KOTTAYAM DISTRICT).

BY ADV. SRI.M.C.CHERIAN

RESPONDENT: (RESPONDENT IN O.P.):-

UNION OF INDIA REPRESENTED BY SECRETARY,
MINISTRY OF CHEMICALS AND FERTILIZERS,
DEPARTMENT OF FERTILIZERS, NEW DELHI-1.

BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.P.PARAMESWARAN NAIR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.1269 of 2007

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu,C.J.

This appeal is directed against the correctness or otherwise of the judgment rendered by a learned Single Judge of this Court in O.P. No.13092 of 2003 dated 2.1.2007.

2. The only relief that was sought for by the petitioner in the writ petition was to direct the Central Government to issue appropriate orders granting subsidy to the Rock Phosphate (a type of fertilizer) also. The case before the Court was that the Central Government has granted subsidy to the users of Single Super Phosphate and the same is not extended to the users of Rock Phosphate and, therefore, according to the petitioner, there is discrimination.

3. The petitioner had approached this Court on earlier occasion in O.P.No.18241 of 2002. This Court disposed of the writ petition with a direction to the Central Government to consider the request of the petitioner and pass appropriate orders.

4. After disposal of that writ petition, the respondents have passed an order dated 10.12.2002. The order so passed reads as under:

> "As directed by Hon'ble Kerala High Court vide judgment dated 3.7.2002, the Government has examined Exhibit P2 annexed with the copy of the judgment. The Government considers the need to provide subsidy only when it decides to fix the consumer/selling price for any item. For SSP, the selling price is fixed by various State Governments, however, in the case of rock phosphate used as direct application fertilizer, consumer prices are not being fixed by the State Governments. The Government of India has not considered it necessary to fix the retail prices for rock phosphate to be used as direct

> application fertilizer. Therefore, the issue of extending subsidy to the rock phosphate used as direct application fertilizer does not find favour with the Central Government".

5. Granting of subsidy is the policy decision of the Central and State Governments. While granting subsidy if there is discrimination, this Court may, in exercise of its discretionary and extra-ordinary jurisdiction under Article 226 of the Constitution of India, can entertain a petition and grant reliefs.

5. In the instant case, the Central Government has granted subsidy to users of Single Super Phosphate. The same is denied to the users of Rock Phosphate. In the case of users of Single Super Phosphate, they fall into one category. Similarly, the farmers who use Rock Phosphate fall into a different category altogether. The concept of Article 14 is attracted only when equals are treated unequally. In the present case, unequals are treated unequally and, therefore, the concept of Article 14 is not attracted in the above facts situation. Understanding the aforesaid position, in our opinion, the learned Single Judge has rightly rejected the writ petition. The order passed by the learned Single Judge does not suffer from any infirmity so as to call for our interference. Accordingly, the writ appeal requires to be rejected and it is rejected. Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/DK